REMARKS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-20 are currently pending. Claims 1, 5, 8, 11, and 15-20 have been amended by the present amendment. The changes to the claims are supported by the originally filed specification and do not add new matter.

In the outstanding Office Action, Claims 1-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,212,160 to Barbieri et al. (hereinafter "the '160 patent") in view of U.S. Patent 5,818,603 to Motoyama (hereinafter "the '603 patent").

Claim 18 is directed to a computer-implemented method for causing at least one of a device, an appliance, an application, and an application unit to control a protocol used for data communication to a remote receiver, the method comprising: (1) providing plural application-layer communications protocols for transferring data; (2) selecting a first protocol of the plural application-layer communication protocols to transfer data to the remote receiver from the at least one of a device, an appliance, an application, and an application unit; (3) selecting a second protocol of the plural application-layer communications protocol to transfer data to the remote receiver from the at least one of a device, an appliance, an application, and an application unit; (4) collecting events at the at least one of a device, an appliance, an application, and an application unit; (5) performing a first attempt to transfer the collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit using the first selected protocol; and (6) performing a second attempt to transfer the collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit using the second selected protocol after the first attempt, automatically without human intervention. Claim 18 has been amended to clarify that plural application-layer communication protocols are provided and

selected from. The changes to Claim 18 are supported by the originally filed specification and do not add new matter.

Regarding the rejection of Claim 18 under 35 U.S.C. § 103, the Office Action asserts that the '160 patent discloses everything in Claim 18 with the exception of "collection and transferring of collected events at the at least one of a device, an appliance, an application, and an application unit,"[1] and relies on the '603 patent to remedy those deficiencies.

The '160 patent is directed to a method of automatically selecting a protocol to match the protocol of a communications network. In particular, the '160 patent discloses that a device initially attempts to communicate by using a preferred one of the communication protocols, and attempts to communicate by using another one of the protocols if the initial attempt fails. Moreover, the '160 patent discloses that, even if a successful attempt establishes a first communication channel, the device may again attempt to communicate using the successful protocol to establish a second communications channel.

However, Applicant notes that the '160 patent discloses protocols such as TCP and IPX/SPX. Applicant respectfully submits that these are not application-layer protocols. Accordingly, Applicant respectfully submits that the '160 patent fails to disclose the step of providing plural application-layer communication protocols for transferring data, as recited in Claim 18. Moreover, Applicant respectfully submits that the '160 patent fails to disclose the steps of selecting a first protocol of the plural application-layer protocols, and selecting a second protocol of the plural application-layer protocols, as recited in Claim 18. Rather, the protocols disclosed in the '160 patent are not at the application layer. Moreover, as admitted in the Office Action, the '160 patent fails to disclose the step of collecting events at the at least one of a device, an appliance, an application, and an application unit; and performing the first and second attempts to transfer the collected events, as recited in Claim 18.

---

[1] See page 3 of the outstanding Office Action.

The outstanding Advisory Action states that the '160 patent discloses that the invention is not limited to use with transport-layer protocols, but "may be used in any complicated network environments that use multiple different protocols."[2] The Advisory Action concludes that "[i]t was never the intent of the inventors to limit their invention to transport-layer protocols."[3] However, regardless of this conclusion about what the unstated intent of the '160 inventors was, Applicant respectfully submits that the '160 patent does not disclose providing plural application-layer communication protocols, and selecting a first protocol and a second protocol of the plural application-layer communication protocols, as required by Claim 18. Moreover, the "other" protocols referred to by the '160 patent appear to be transport-layer protocols, not application layer protocols. The '160 patent does not specifically address application-layer protocols at all. Any conclusion that the '160 patent discloses application-layer protocols is pure speculation.

Further, Applicant notes that the outstanding Advisory Action presents the argument that the '160 patent inherently discloses application-layer protocols because it discloses transport-layer protocols, and application-layer protocols are built on top of transport-layer protocols. However, Applicant respectfully submits that the outstanding Office Action fails to provide evidence that the step of providing plural application-layer communication protocols and selecting first and second application-layer protocols is "necessarily present" in the teachings of the '160 patent. It does not follow that providing plural transport-layer protocols requires also providing plural application-layer protocols. For example, the same application-layer protocol can be used with multiple transport-layer protocols. Accordingly, Applicant respectfully submits that the providing and selecting among plural application-layer protocols is not inherent in the teachings of the '160 patent.

_____

[2] See page 2 of the Advisory Action and the '160 patent, column 4, lines 23-32.
[3] See page 2 of the outstanding Advisory Action.

The '603 patent is directed to a method and system for controlling and communicating with machines using multiple communication formats. The '603 patent discloses that, after information is transmitted from a first device to a second device and upon receiving the information, the second device determines the communication protocol utilized by the first device by looking up an identifier contained within the information to determine a format of a header of the transmission. Further, the '603 patent discloses that the second device then parses the header of the transmission used in the format of the header which was determined, and determines the communication protocol using information in the header which was parsed using the format of the header. However, Applicant respectfully submits that the '603 patent fails to remedy the deficiencies of the '160 patent, regarding the claim providing step. In particular, the '603 patent fails to disclose providing <u>plural application-layer protocols</u> for transferring data, performing a first attempt to transfer collected events using the first selected protocol, and performing a second attempt to transfer the collected invents using the second selected protocol after the first attempt, automatically without human intervention, as required by Claim 18.

Thus, no matter how the teachings of the '160 and '603 patents are combined, the combinations do not teach or suggest the steps of <u>providing plural application-layer communication protocols for transferring data</u>, selecting a first protocol, and selecting a select protocol, as recited in Claim 18. Accordingly, Applicant respectfully traverses the rejection of Claim 18 (and all associated dependent claims) under 35 U.S.C. § 103.

Independent Claims 1, 8, and 19 recite limitations analogous to the limitations recited in Claim 18. Moreover, Claims 1, 8, and 19 have been amended in a manner analogous to the amendments to Claim 1. In particular, Applicant notes that Claim 8 recites a first computer code device configured to provide plural application layer communication <u>formats</u> for providing data transfer; a fifth computer code device configured to attempt to transfer the

collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit <u>using a first selected format</u>; and a sixth computer code device configured to transfer the collected events to the remote receiver from the at least one of a device, an appliance, an application, and an application unit <u>using a second selected format</u> after attempting to transfer the collected events to the remote receiver from the at least one of a device, an appliance, and an application, and an application unit using the first format, automatically without human intervention.
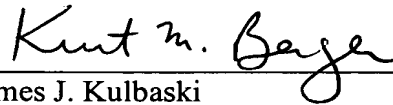
However, Applicant respectfully submits that the combined teachings of the '603 and '160 patents fail to disclose the first computer code device, the fifth computer code device, and the sixth computer code device recited in Claim 8. In particular, Applicant notes that the '160 patent is to direct to various <u>transport-layer protocols</u>, but not plural application-layer formats, as recited in Claim 8. In this regard, Applicant notes that Claim 15, which depends from Claim 8, further recites a seventh computer code device configured to provide plural application-layer communication <u>protocols</u> for providing data transfer. Moreover, Applicant notes that page 3 of the outstanding Office Action asserts that different protocols inherently have different formats, and since the '160 patent is directed to various transport-layer protocols it must provide plural application-layer communication <u>formats</u>. In a non-limiting example, Applicant notes that the formats recited in Claim 8 could include for example an FTP text format, an FTP binary format, or base64 encoding for SMTP. It is unclear to Applicant how merely providing transport-layer protocols can read on these formats. Accordingly, Applicant respectfully traverses the rejection of Claims 1, 8, and 19 under 35 U.S.C. § 103.

Thus, it is respectfully submitted that independent Claims 1, 8, 18, and 19 (and all associated dependent claims) patentably define over any proper combination of the '603 and '160 patents.

Consequently, in view of the present amendment and in light of the above discussion,

the outstanding grounds for rejection are believed to have been overcome. The application as

amended herewith is believed to be in condition for formal allowance. An early and

favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

Kurt M. Berger

James J. Kulbaski
Attorney of Record
Registration No. 34,648

Kurt M. Berger, Ph.D.
Registration No. 51,461

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 03/06)

I:\ATTY\KMB\161896US-AM DUE 3-26-07.DOC